

to prevent modification.

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Commonwealth of Massachusetts
THE TRIAL COURT
SUPERIOR COURT DEPARTMENT

DUKES, ss

Docket No.: 1974CV00025

Dr. David Gorenberg,
Plaintiff,

v.

RECOVERING CHAMPIONS, LLC, and
NORTH EAST ADDICTION
TREATMENT CENTER,
Defendants.

FILED
SUPERIOR COURT
COUNTY OF DUKES COUNTY
JUL 08 2019
REC'D
CLERK

COMPLAINT AND DEMAND FOR JURY TRIAL

This Complaint is filed against Defendants for breach of the terms of employment contract between Plaintiff and Defendant, Recovering Champions, LLC (formerly, "Recovering Champions, Inc.").

Parties

1. Plaintiff, Dr. David Gorenberg is an individual who resides at 62 Elias Lane, West Tisbury, Massachusetts, in Dukes County.
2. Defendant Recovering Champions, LLC ("Recovering Champions"), is a limited liability Company, organized under the laws of the Commonwealth of Massachusetts.
3. Defendant, North East Addiction Treatment Center ("NEATC") is a for profit business organization that conducts business in the Commonwealth of Massachusetts under the name Recovering Champions.



Jurisdiction & Venue

4. Jurisdiction is proper in this Court as the Plaintiff's claim lies in contract with an amount in controversy in excess of \$25,000.00.
5. Venue is proper in Dukes County pursuant to G.L. c. 223 §1 because Plaintiff resides in Dukes County, Massachusetts.
6. Plaintiff filed a complaint with the Massachusetts Attorney General's Office, Fair Labor and Business Practices Division, and on June 26, 2019 the Massachusetts Attorney General's Office authorized Plaintiff to pursue a private right of action through a civil lawsuit.

Plaintiff's Employment History with Recovering Champions

7. In or around February 2016, Dr. Gorenberg began employment with Recovering Champions as the Medical Director.
8. Kenneth Weber, former CEO of Recovering Champions, hired Dr. Gorenberg as the Medical Director for Recovering Champions.
9. Dr. Gorenberg agreed to work as the Medical Director for Recovering Champions at a rate of \$400 per hour for all service rendered to Recovering Champions.
10. Dr. Gorenberg agreed to provide a mandatory minimum of 10 patient hours per week plus all other duties necessary to serve as the Medical Director of Recovering Champions.
11. In addition to his usual duties as Medical Director, Dr. Gorenberg agreed to be on call twenty-four hours seven days a week as part of his employment with Recovering Champions.

12. Dr. Gorenberg and Recovering Champions did not memorialize Dr. Gorenberg's employment agreement in writing when he started working as the Medical Director in February 2016.
13. At some point during Dr. Gorenberg's employment at Recovering Champions, NEATC purchased Recovering Champions.
14. Following NEATC's purchase of Recovering Champions, NEATC continued to operate the business as Recovering Champions.
15. Following the purchase by NEATC, Dr. Gorenberg remained at Recovering Champions in his position as Medical Director.
16. Dr. Gorenberg's duties as Medical Director remained substantially the same as his duties before the purchase by NEATC.
17. Dr. Gorenberg's compensation as Medical Director for Recovering Champions remained the same as his compensation before the purchase by NEATC.
18. On or about February 28, 2018, Dr. Gorenberg and Defendants memorialized Dr. Gorenberg's employment contract in a document entitled, "Physician Consultant Agreement" (*hereinafter*, "Agreement"), attached herewith as "Appendix A."
19. Paragraph 4.3 of the Agreement states, "In consideration of [Dr. Gorenberg's] services hereunder, [Defendants] agrees to pay the physician an hourly wage as specified in Exhibit A attached hereto ("Wage")."
20. Exhibit A to the Agreement states, "[Defendants] shall pay to [Dr. Gorenberg] an hourly wage of Four (sic) hundred dollars (\$400) for all services delivered by [Dr. Gorenberg] to [Defendants] under the Agreement."
21. Section 3 of the Agreement outlines duties that exceed 10 patient hours.

22. At all times relevant, Dr. Gorenberg received wages equal to ten hours per week at \$400 per hour.
23. Upon information and belief, Defendants only paid Dr. Gorenberg for his mandatory minimum of 10 patient hours during his tenure.
24. Throughout Dr. Gorenberg's tenure with Defendants, Dr. Gorenberg performed the entirety of the 10 patient hour mandatory minimum on site.
25. Upon information and belief, Dr. Gorenberg often spent more than the mandatory minimum of 10 patient hours on site throughout the duration of his employment with Defendants.
26. Beginning on or about November 26, 2018 and continuing throughout Dr. Gorenberg's tenure with Defendants, Dr. Gorenberg worked at least twelve hours and fifteen minutes per week on site.
27. Dr. Gorenberg never received payment for the additional two hours and fifteen minutes per week over his 10 patient hour mandatory minimum on site.
28. Throughout Dr. Gorenberg's tenure with Defendants, Dr. Gorenberg spent at least an additional three hours per week writing patient notes off site.
29. Dr. Gorenberg never received payment for time spent writing patient notes off site.
30. Throughout Dr. Gorenberg's tenure with Defendants, Dr. Gorenberg, while off site, spent at least an additional two hours and twenty minutes per week providing consultation with Defendants' staff as part of his "on call" duties.
31. Dr. Gorenberg never received payment for consultations while off site.

32. Beginning in or around December 2017 and continuing throughout Dr. Gorenberg's tenure with Defendants, Dr. Gorenberg spent at least an additional one hour per week reviewing and signing urinalysis test requests and results.

33. Dr. Gorenberg never received payment for time spent handling urinalysis test requests and results.

34. Throughout Dr. Gorenberg's tenure with Defendants, Defendants failed to pay Dr. Gorenberg for any services delivered to Defendants beyond the mandatory minimum of 10 patient hours per week.

Failure to Pay During Termination Notice Period

35. On or about May 10, 2019, Defendants sent a letter to Plaintiff notifying Plaintiff of Defendants' intention to suspend Plaintiff for 120 days, then terminate Plaintiff following that suspension period.

36. In the May 10, 2019 termination letter to Plaintiff from John Murray, Human Resources for Defendants, outlining Defendants' decision to terminate Plaintiff, John Murray wrote: "Due to these serious issues, the company chooses to exercise their rights under Section 6.2(e) of your Physician's Consulting Agreement. Effective immediately and for the next 120 calendar days, your services and privileges with Recovering Champions, Inc. have been suspended without pay." (Termination Letter from John Murray, attached hereto as "Appendix B.")

37. Paragraph 6.2(e) of the Parties' Agreement provides: "*As an alternative to termination under this section, the Corporation may suspend the Physician, without pay, for an agreed upon period of time.*" (Emphasis added.)

38. By its express terms, Paragraph 6.2(e) of the Agreement allows for an unpaid period of suspension as an "alternative to termination."

39. By its express terms, Paragraph 6.2(e) of the Agreement allows the period of unpaid suspension must be "agreed upon" by the parties.

40. Plaintiff did not agree to any period of unpaid suspension.

41. John Murray's letter continues: "As per the conditions in the above-mentioned Physician Consultant Agreement, we are also exercising our option, as listed in Section 6.2(c) of the agreement. Please allow this letter to serve as notice to terminate the Physician Consultant Agreement on or before Saturday, September 7, 2019. I think that you will find that this 120-day notice satisfies the legal constraints of the agreement and allows us to sever this contract without any further need for legal action."

42. Paragraph 6.2(c) of the Parties' Agreement provides: "Either party may terminate this Agreement without cause upon 120 days prior written notice. In lieu of any notice period hereunder, the Corporation may elect to terminate Physician immediately *and continue Physician's regular compensation for the duration of the notice period.*" (Emphasis added.)

43. As of the date of this Complaint, Plaintiff has not been paid for any portion of the 120-day notice period prior to termination.

Recovering Champions Requests Plaintiff Continue to Work During "Suspension Period"

44. Notably, though Defendants' May 10th notice of termination purports to suspend Plaintiff without pay for 120 days, Defendants have continued to ask Plaintiff to perform services for Recovering Champions.

45. Upon information and belief, one of Plaintiff's responsibilities as Medical Director at Recovering Champions was to review and "sign off" on Recovering Champions' on-site drug testing results.
46. Upon information and belief, Mark Shields oversees on-site drug testing performed at Recovering Champions.
47. On or around June 10, 2019, Mark Shields contacted Plaintiff to ask Plaintiff to "sign off" on drug test results performed at Recovering Champions.
48. On or around June 20, 2019, Mark Shields again contacted Plaintiff to ask him to "sign-off" on drug test results performed at Recovering Champions.
49. Upon information and belief, Mark Shields was instructed to contact Plaintiff to perform this work for Defendants by Nicole Costa, Recovering Champions' Chief Operating Officer.

COUNT 1
Breach of Contract for
Unpaid Wages
(Recovering Champions and NEATC)

50. Plaintiff incorporates by reference the facts alleged in all preceding Paragraphs of this Complaint as if fully set forth herein.
51. In or about February of 2016 Plaintiff and Defendants formed an oral employment contract, which was later memorialized in writing on February 28, 2018.
52. While Plaintiff was employed by Defendants, the Agreement governed the services for which Plaintiff would be paid, and the amount Plaintiff would be paid per hour.
53. While Plaintiff was employed by Defendants, Plaintiff performed hundreds of hours of work for Defendants under the Agreement, for which Plaintiff was not paid.